

### REMARKS

Claims 1 to 15 and 17 to 20 are pending in the above-referenced application.

Reconsideration is respectfully requested based on the following.

With respect to paragraph three (3) of the Final Office Action, claims 1 to 15 and 17 to 20 were rejected under the first paragraph of 35 U.S.C. § 112.

While the rejections may not be agreed with in view of the fact the present application, including at page 3, lines 13 to 36, page 4, lines 7 to 12, page 6, line 24 to page 7, line 17, and page 9, lines 4 to 9 (e.g., “decouple the reception of data . . . from the reprogramming operation”), supports the claim language. This is especially so, as viewed by a person having ordinary skill in the art, since it is axiomatic that the Federal Circuit has made plain that a claim feature need not be recited *in haec verba*, so long as it is effectively disclosed to a person having ordinary skill in the art, as here.

Nevertheless, to facilitate matters, claims 1, 2 and 13 have been rewritten without prejudice to provide that the reprogramming only occurs when the vehicle is not moving, even though the specification makes plain that there is no restriction on when reception may occur as to the data received by a vehicle from an external server. This feature is supported by the present application at page 3, lines 13 to 36, page 4, lines 7 to 12, page 6, line 24 to page 7, line 17, and page 9, lines 4 to 9 (e.g., “decouple the reception of data . . . from the reprogramming operation”).

It is therefore respectfully requested that the written description rejections be withdrawn.

With respect to paragraph four (4) of the Final Office Action, claims 1 and 13 were rejected under the second paragraph of 35 U.S.C. § 112 as indefinite, as to antecedent basis. The claims have been rewritten as to the antecedent basis, and it is therefore respectfully requested that the indefiniteness rejections be withdrawn.

Claims 1 to 15 and 17 to 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Brunemann in view of Tsunura and Levy.

While the obviousness rejections may not be agreed with, to facilitate matters, claims 1, 2 and 13 have been rewritten to provide that the reprogramming only occurs when the vehicle is not moving, as provided for in the context of each of claims 1, 2 and 13.

In contrast, “Brunemann” does not disclose any reprogramming of a control unit, but only a data update of an already programmed control unit, since it would be very dangerous

to reprogram a control unit when the vehicle is moving. So in "Brunemann", a real reprogramming is not shown and would be very dangerous, as evidenced by the fact that there is no buffer memory and no predefined operating state is used.

As to "Levy" and "Tsumura", these references also do not disclose any reprogramming of a control unit. In "Levy" data is only transmitted if the vehicle is not moving, and in "Tsumura" the data is only transmitted when the vehicle is moving because there is no disclosed predefined operating state.

The difference as to the applied references, whether taken alone or combined, is that the reprogramming -- which means the transmitting of the data from the internal buffer memory to reprogram the control unit -- is only performed when the vehicle is not moving because of safety aspects, for example.

It is therefore respectfully requested that the obviousness rejections be withdrawn.

### CONCLUSION

It is therefore respectfully requested that the objections and rejections be withdrawn, since they have been obviated and since all of the pending and considered claims are allowable. It is respectfully requested that the present application issue as early as possible.

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Respectfully submitted,  
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